

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3650 of 1998

with

SPECIAL CIVIL APPLICATION No 4711 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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MAGANBHAI L CHAUHAN

Versus

DIVISIONAL CONTROLLER

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Appearance:

1. Special Civil Application No. 3650 of 1998  
MR JS BRAHMBHATT for Petitioner
2. Special Civil Application No 4711 of 1998  
Mr D R Thakkar for M/S THAKKAR ASSOC. for Petitioner  
MR JS BRAHMBHATT for Respondent No. 1

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CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 02/11/98

ORAL JUDGEMENT

Both these Special Civil Applications under Article 226 of the Constitution of India has been filed against the award dated 22.1.1998 passed by the Labour Court, Vadodara in Reference (LCV.No.1187/94). Special Civil Application No.4711/98 has been fi by the employer-Gujarat State Road Transportation Ltd. challenging the order reinstatement with 50% backwages. Special Civil Application No.3650/98 has been filed by the workmen-Maganbhai L Chauhan challenging the order so far as not paying 50% backwages.

2. The workmen was a Conductor in the employment of the Gujarat State Road Transport Corporation. He was charge-sheeted for wilful absence for the period 6.1.1994 to 23.1.1994. The workmen took the plea that he could not report on duty on account of sickness. He also produced a medical certificate when he reported for duty. The disciplinary authority found that the certificate not reliable. In view of this, the disciplinary authority rejected the plea and dismissed him from service. On dispute being raised, the State of Gujarat referred to the dispute to Labour Court. In the opinion of the Labour Court, the disciplinary authority was wrong in rejecting the medical certificate, and accordingly the order of termination was set aside and direction was given to reinstate the workmen-conductor with 50% backwages.

3. It is contended by Mr D R Thakkar, learned Advocate appearing for the Gujarat State Road Transport Corporation (for short, 'the GSRTC'), that the Labour Court committed error in disturbing the finding with respect to the truthfulness of the medical certificate without any basis. It is further submitted that there were as many as 13 cases of such misconduct against the workman, thus he was found to be a habitual absentee. In spite of repeated opportunities given, he did not improve. On the other hand, it is contended by Mr Brahmbhatt, learned Advocate for the workman that the findings arrived at by the Labour Court with respect to the medical certificate does not call for interference under Article 227 of the Constitution of India. He further submits that even if it is assumed that there is a case of wilful absence, then also the workmen ought to have been dealt with lightly. He placed reliance on a decision in the case Union of India v. Giriraj Sharma, reported in AIR 1994 SC 215 and another decision in the case of Jitendra Singh v. Shri Baidyanath Ayurved Bhawan Ltd., reported in AIR 1984 SC 976.

4. I have considered the rival contentions. I have also seen the medical certificate produced by the workmen. It is only stated in the medical certificate that the workmen was suffering from abdominal pain. The workmen remained absent for 18 days. He did not care even to inform the concerned authority with respect to his absence. The authority found the medical certificate not reliable. The Labour Court has not assigned any reasons to reverse the finding of the disciplinary authority. In view of this, the Labour Court has committed error in disturbing the findings of the disciplinary authority. Thus, in my view, there is a clear case of wilful absence amounting to misconduct. Thus, the order directing the reinstatement of the workmen cannot sustain.

5. Dealing with the punishment, it has been brought to my notice that such misconduct was committed by the workmen for more than 13 times. A statement was filed showing wilful absence on earlier occasions before the Labour Court. A statement in this regard has been made before me on oath by Mr Somabhai, an officer of the GSRTC. This fact has not been controverted by the workmen by filing counter affidavit. Keeping in view the past conduct of the workman, the punishment of termination from service cannot be said to be harsh. The cases cited by the learned Advocate for the workman are not of repeaters. Thus, none of them is of any assistance to the petitioner.

5. In view of the aforesaid, the Special Civil Application No.4711/98 filed by the GSRTC is allowed and the award dated 22.1.1998 made by the Labour Court is quashed and set aside. As the order of termination has been upheld, nothing survives in Special Civil Application No.3650/98 and the same is accordingly rejected. Rule made absolute in Special Civil Application No.4711/98. Rule discharged in Special Civil Application No.3650/98.

Mr Brahmabhatt, learned Advocate appearing for the workmen wants to challenge this order, and therefore, he prays that the order of this Court may not be given effect for a period of 15 days. Considering the facts and circumstances of the case, it is directed this order shall not be given effect for a period of 15 days.

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msp.